HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPSB No. 1790/2002
Rajendra Kumar
& others
Vs
State of Uttaranchal
through Secretary

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 27.3.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT ANINITAL

WRIT PETITION NO. 1790 (S/B) OF 2002

Rajendra Kumar S/o Late Sri Munna Lal
R/o Mohalla Maheshpura Kashipur,
District Udham Singh Nagar. .....Petitioner

Versus

1. State of Uttaranchal through Secretary Education, Dehradun, Uttaranchal.
2. Principal, Government Girls Inter College, Kashipur, District Udham Singh Nagar. .....Respondents

27.03.2006

Sri Goapl K. Verma, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Gopal K. Verma, Learned Counsel for the petitioner and Learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing to the respondents to give appointment to the petitioner in class IV under Dying in Harness Rules.

Briefly stated, Father of the petitioner Late Munna Lal was appointed on 16.06.1979 as Sweeper/Chaukidar in Government Girls Inter College, Kashipur District Udham Singh Nagar. The father of the petitioner died on 24.5.2002. The grievance of the petitioner that he is handicapped and a certificate has been issued by the Chief Medical Officer, Udham Singh Nagar certifying 50% disability.

After the death of his father, the petitioner approached the authorities concerned as well as the respondent No.2 and requested to give appointment on the compassionate ground. Thereafter Petitioner made a representation to the respondent No.2 on 23.9.2002 requesting him to give appointment to the petitioner on the compassionate ground under the Dying In Harness Rules but of no avail.

Learned Standing Counsel has filed the Counter affidavit which stating therein that the father of the petitioner was appointed to work as sweeper cum chaukidar temporarily.

Rules 3, 4 & 5 of the U.P. Recruitment of Dependants of Government Servants Dying In Harness Rules 1974 are quoted below :

"Rule 3. ***Application of the rules*** *– These rules shall apply to recruitment of dependents of the deceased Government servants to public services and posts in connection with the affairs of State of Uttar Pradesh except services and posts which are within the purview of the Uttar Pradesh Public Service Commission.*

Rule 4. ***Overriding effect of these rules*** *– These rules and any orders issued there under shall, have effect notwithstanding anything to the contrary contained in any rules, regulations or orders in force at the commencement of these rules.*

*Rule 5.****"[Recruitment of a member of the family of the deceased]***

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Centre Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service

Commission, in relaxation of the normal recruitment rules if such person –

(i) fulfils the educational qualification prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant;

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement, as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death."

In ***Writ Petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others,*** *similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as under:-*

"For the reasons recorded above, since the petitioners' husband was continuing in employment for more than 16 years, petitioner is entitled 5to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order."

In ***Anju Misra v. General Manager, Kanpur Jal Sansthan, Kanpur 2004 (1) Page 201*** *after relying upon the judgment in* ***Santosh Kumar Misra v. State of U.P. and others 2002 (1) UPLBEC, 237,*** *it has been held as under:-*

"9. According to the submission of the learned Counsel for the State, a daily wager or work charge employee who is engaged by the State Government or any department of the State Government cannot be treated as a Government Servant within the definition of Rule 2 of the aforesaid Rules. Qualifying the above argument, the learned Counsel for the State further submitted that though an employee who is not regularly appointed is covered by the definition in view of sub-clause(iii) of Rule 2(a) but in that case such employee must have put in three years continuous service, that too in regular vacancy in such employment. Since, the petitioner's father was earlier a daily wager or muster roll employee and later on worked as work charge employee, therefore, it cannot be said that he was appointed regularly or had worked in regular vacancy."

"14. The practice of appointing daily wagers or work charge employees is very much prevailing in the State of Uttar Pradesh and instances are no less in number where the daily wager or work charge employees in the Government Department have been allowed to continue for years together, namely, 15 years, 20 years and 25 years or till they actually reach the age of superannuation to which they may not be entitled, not being a Government Servant but, they are disposed with their engagement or attaining the age of superannuation. The practice of appointing such daily wagers and work charge employees has constantly been a matter of great concern for the judiciary and for that matter, the Apex Court has many a times issued directions for framing schemes so as to accommodate all daily wagers of long standing duration and work-

charge employees as a regular employees. It would be needless to mention that such a scheme has been ordered to be framed by the Court in the department of Rural Engineering Services in the Forest Department and many other department."

In ***Meean Devi Chaudhary v. Chief Engineer, U.P. Public Works Department, Lucknow (2002) 2 UPLBEC 1421,*** *it has been held as under :-*

"A woman cannot be denied appointment under this Rule on the alleged ground that her deceased husband was not working on regular basis in view of Meena Devi Chaudhary v. Chief Engineer, U.P. Public Works Department, Lucknow (2000) 2 UPLBEC 1421 at 1422 (All)."

Further in view of the judgment of the Apex Court in the case of ***Pushpa Lata Dixit vs. Madhyamik Shiksha Parishad and others 1991 (18) ALR 509 and Smt. Sushma Gosain and others vs. Union of India and others, AIR 1989 S.C., 1976*** *so far as the appointment on compassionate ground should not be delayed as after the death of bread-earner, the whole family is starving.*

Similarly in the case of ***State of Manipur Vs. Thingujam Brojen (1996) 9 SCC Page 29, further in Smt. Saraj Devi Vs. State of U.P. 1999 (3) Educational and Service Cases Page 215,*** *the benefit has also been extended to the temporary employees.*

Learned counsel for the petitioner has relied upon the observations in the case **of Santosh Kumar Mishra Vs. State of U.P.** (2002) 1 U.P.L.B.E.C. pg.337 as well as the decision in the case of **Smt. Laxmi Devi Vs. State of Uttaranchal & others** to the following effect:-

Admittedly, the husband of the petitioner has worked for more than 12 years. This fact has not been denied in the counter

affidavit. The deceased was appointed on 1st August, 1989 and continued to serve until his death i.e. on 25th April, 2002 and during this period there is no dispute from either side that he continued to work and there was no break in his service.

The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** *has held as under :-*

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** *after relying upon the judgment of* ***Sushma Gosain v. Union of India (1989) 4 SCC 468*** *it has been held by the Apex Court as under:-*

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

Therefore, as will appear from the aforesaid judgment that the object of the grant of compassionate appointment is to enable the

family to tide over the sudden crisis. The object is to help the deceased family from starvation and not to make a selection. In the same judgment it has also been observed as under:-

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of he services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

As will appear from the aforesaid decisions that the appointment on compassionate ground should not be delayed as it being not a recruitment but its object is to help the deceased family from starvation and further to save from the hardship caused to the family after the death of the bread earner.

In view of the aforesaid facts and circumstances, the respondents are directed to consider the representation of the petitioner under Dying In Harness Rules on the compassionate ground within a period of 6 weeks from the date of production of certified copy of this order in accordance with.

Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

27.03.2006
Jain